

Long-Term Care Survey Alert

Case Study: Find Out How This Facility Beat An Unreasonable G-Level Deficiency

Sometimes it pays to enlist CMS' assistance.

Fair is fair - and G-level tags for potential harm don't really qualify.

That's why one facility double tagged with G citations -- one for resident harm and the other for potential harm -- accepted the first and battled the second.

Here's what happened: The facility in question received a G-level deficiency when a resident suffered a burn because a caregiver spilled too-hot food on the resident's chest, reports attorney **Christopher Lucas** in Mechanicsburg, PA. The facility immediately revised its policies and procedures to prevent a similar accident from happening in the future. Nevertheless, the facility racked up a second G-level citation -- an "administration" tag -- when the survey team contended the facility's post-accident revision to its policies and procedures didn't cut the mustard for protecting the resident from a similar incident.

"The facility administrators disagreed with the surveyors regarding the sufficiency of the revised policies and procedures," says Lucas. Moreover, "they definitely did not want to explain to their general liability carrier that not only did they permit a resident to be burned -- they were incapable of initiating basic measures to ensure that it did not happen again."

After being consulted on the case, Lucas believed the second G deficiency was inconsistent with the law. In his view, the allegedly deficient new policies and procedures had not caused any actual harm, as required for surveyors to cite a G-level deficiency.

The facility's response: The first thing the facility did was to put together an IDR and submit it to the state. But the state agency refused to consider the argument about the G-level deficiency, claiming that IDR procedures say you can't challenge scope and severity determination, Lucas notes.

The next step: The facility then contacted the **Centers for Medicare & Medicaid Services** to arbitrate the dispute. "We narrowed and refined our IDR a bit, and submitted it under a letter to CMS politely asking for their help," Lucas reports. "We suggested that the state action was a breach of the standards imposed by its contract" which required the state agency to cite deficiencies based on regulations and the SOM.

The result: CMS responded with a carefully worded opinion letter that affirmed the facility's contention that a G-level deficiency requires a showing of actual harm. "Confronted with the CMS letter, the state survey agency changed the CMS 2567 and deleted the second G-level deficiency, although it warned us that this was an 'exceptional' case and it did not ever expect to do so again," Lucas relates.